

party or person refuses to obey an order made under paragraph (a) of this section requiring him to answer designated questions, or an order made under §1114.30 requiring him to produce any document or other thing for inspection, copying, testing, sampling, or photographing or to permit it to be done, or to permit entry upon land or other property, the Board may make such orders in regard to the refusal as are just, and among others the following:

(i) An order that the matters regarding which questions were asked, or the character or description of the thing or land, or the contents of the paper, or any other designated facts should be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order:

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony:

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the proceedings or any party thereof.

(iv) In lieu of any of the foregoing orders, or in addition thereto, the Board shall require the party failing to obey the order or the attorney advising that party, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Board finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) *Expenses on refusal to admit.* If a party, after being served with a request under §1114.27 to admit the genuineness of any document or the truth of any matter of fact, serves a sworn denial thereof, and if the party requesting the admission thereafter proves the genuineness of any such document or the truth of any such matter of fact the Board may order the party making such denial to pay to such other party the reasonable expenses incurred in making that proof, including reasonable attorney's fees.

(d) *Failure of party to attend or serve answers.* If a party or a person or an of-

ficer, director, managing agent, or employee of a party or person willfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under §1114.26, after proper service of such interrogatories, the Board on motion and notice may strike out all or any part of any pleading of that party or person, or dismiss the proceeding or any part thereof. In lieu of any such order or in addition thereto, the Board shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Board finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(e) *Expenses against United States.* Expenses and attorney's fees are not to be imposed upon the United States under this rule.

[47 FR 49562, Nov. 1, 1982, as amended at 61 FR 52713, Oct. 8, 1996]

PART 1115—APPELLATE PROCEDURES

Sec.

1115.1 Scope of rule.

1115.2 Initial decisions.

1115.3 Board actions other than initial decisions.

1115.4 Petitions to reopen administratively final actions.

1115.5 Petitions for other relief.

1115.6 Exhaustion of remedies and judicial review.

1115.7 Petitions for judicial review; mailing address.

1115.8 Petitions to review arbitration decisions.

1115.9 Interlocutory appeals.

AUTHORITY: 5 U.S.C. 559; 49 U.S.C. 721.

SOURCE: 47 FR 49568, Nov. 1, 1982, unless otherwise noted.

§1115.1 Scope of rule.

(a) These appellate procedures apply in cases where a hearing is required by law or Board action. They do not apply to informal matters such as car service, temporary authority, suspension, special permission actions, or to other matters of an interlocutory nature. Abandonments and discontinuance proceedings instituted under 49 U.S.C.

Surface Transportation Board, DOT

§1115.3

10903 are governed by separate appellate procedures exclusive to those proceedings. (See 49 CFR part 1152)

(b) Requests for appellate relief may relate either to initial decisions or to Board actions other than initial decisions. For each category, this rule describes the types of appeal permitted, the requirements to be observed in filing an appeal, provisions for stay of the action, and the status of the action in the absence of a stay.

(c) Appeals from the decisions of employees acting under authority delegated to them by the Chairman of the Board pursuant to §1011.7 will be acted upon by the entire Board. Appeals must be filed within 10 days of the date of the action taken by the employee, and responses to appeals must be filed within 10 days thereafter. Such appeals are not favored; they will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.

[47 FR 49568, Nov. 1, 1982, as amended at 61 FR 52714, Oct. 8, 1996]

§1115.2 Initial decisions.

This category includes the initial decision of an administrative law judge, individual Board Member, or employee board.

(a) An appeal of right is permitted.

(b) Appeals must be based on one or more of the following grounds:

(1) That a necessary finding of fact is omitted, erroneous, or unsupported by substantial evidence of record;

(2) That a necessary legal conclusion, or finding is contrary to law, Board precedent, or policy;

(3) That an important question of law, policy, or discretion is involved which is without governing precedent;

(4) That prejudicial procedural error has occurred.

(c) Appeals must detail the assailed findings with supporting citations to the record and authorities.

(d) Appeals and replies shall not exceed 30 pages in length, including argument, and appendices or other attachments, but excluding a table of cases and an index of subject matter.

(e) Appeals must be filed within 20 days after the service date of the decision or within any further period (not to exceed 20 days) the Board may au-

thorize. Replies must be filed within 20 days of the date the appeal is filed.

(f) The timely filing of an appeal to an initial decision will stay the effect of the action pending determination of the appeal.

(g) If an appeal of an initial decision is not timely filed or the Board does not stay the effectiveness on its own motion, the order set forth in the initial decision shall become the action of the Board and be effective at the expiration of the time for filing, unless otherwise provided.

[47 FR 49568, Nov. 1, 1982, as amended at 54 FR 19894, May 9, 1989; 61 FR 52714, Oct. 8, 1996]

§1115.3 Board actions other than initial decisions.

(a) A discretionary appeal of an entire Board action is permitted. Such an appeal should be designated a "petition for reconsideration."

(b) The petition will be granted only upon a showing of one or more of the following points:

(1) The prior action will be affected materially because of new evidence or changed circumstances.

(2) The prior action involves material error.

(c) The petition must state in detail the nature of and reasons for the relief requested. When, in a petition filed under this section, a party seeks an opportunity to introduce evidence, the evidence must be stated briefly and must not appear to be cumulative, and an explanation must be given why it was not previously adduced.

(d) The petition and any reply must not exceed 20 pages in length. A separate preface and summary of argument, not exceeding 3 pages, may accompany petitions and replies and must accompany those that exceed 10 pages in length.

(e) Petitions must be filed within 20 days after the service of the action or within any further period (not to exceed 20 days) as the Board may authorize.

(f) The filing of a petition will not automatically stay the effect of a prior action, but the Board may stay the effect of the action on its own motion or on petition. A petition to stay may be

§1115.4

filed in advance of the petition for reconsideration and shall be filed within 10 days of service of the action. No reply need be filed. However, if a party elects to file a reply, it must reach the Board no later than 16 days after service of the action. In all proceedings, the action, if not stayed, will become effective 30 days after it is served, unless the Board provides for the action to become effective at a different date. On the day the action is served parties may initiate judicial review.

[61 FR 52714, Oct. 8, 1996, as amended at 61 FR 58491, Nov. 15, 1996]

§1115.4 Petitions to reopen administratively final actions.

A person at any time may file a petition to reopen any administratively final action of the Board pursuant to the requirements of §1115.3 (c) and (d) of this part. A petition to reopen must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances and must include a request that the Board make such a determination.

[61 FR 52714, Oct. 8, 1996]

§1115.5 Petitions for other relief.

(a) A party may petition for a stay of an action pending a request for judicial review, for extension of the compliance date, or for modification of the date the terms of the decision take effect. The reasons for the desired relief must be stated in the petition, and the petition must be filed not less than 10 days prior to the date the terms of the action take effect. No reply need be filed. If a party elects to file a reply, the reply must reach the Board no later than 5 days after the petition is filed.

(b) When the terms of a Board action take effect on less than 15 days' notice, a petition for stay pending a request for judicial review must be filed prior to the institution of court action and as close to the service date as practicable. No reply need be filed. Where time permits, a party may elect to file a reply.

(c) A petition or reply must not exceed 10 pages in length.

[47 FR 49568, Nov. 1, 1982, as amended at 61 FR 52714, Oct. 8, 1996]

49 CFR Ch. X (10–1–02 Edition)

§1115.6 Exhaustion of remedies and judicial review.

These rules do not relieve the requirement that a party exhaust its administrative remedies before going to court. Any action appealable as of right must be timely appealed. If an appeal, discretionary appeal, or petition seeking reopening is filed under §1115.2 or §1115.3 of this part, before or after a petition seeking judicial review is filed with the courts, the Board will act upon the appeal or petition after advising the court of its pendency unless action might interfere with the court's jurisdiction.

[47 FR 49568, Nov. 1, 1982, as amended at 61 FR 52714, Oct. 8, 1996]

§1115.7 Petitions for judicial review; mailing address.

Petitions for judicial review of final agency orders may be served on the Board pursuant to 28 U.S.C. 2112(a) and be addressed to "General Counsel, Office of the General Counsel, Surface Transportation Board, Washington, DC 20423."

[53 FR 20854, June 7, 1988, as amended at 61 FR 52714, Oct. 8, 1996]

§1115.8 Petitions to review arbitration decisions.

An appeal of right is permitted. The appeal must be filed within 20 days of a final arbitration decision, unless a later date is authorized by the Board, and is subject to the page limitations of §1115.2(d). Standards for Board review of arbitration decisions are set forth in *Chicago and North Western Transp. Co.—Abandonment*, 3 I.C.C.2d 729 (1987), *aff'd sub nom. International Brotherhood of Electrical Workers v. STB*, No. 87–1629 (D.C. Cir. November 25, 1988). The timely filing of a petition will not automatically stay the effect of the arbitration decision. A stay may be requested under §1115.5.

[54 FR 19894, May 9, 1989, as amended at 61 FR 52714, Oct. 8, 1996]

§1115.9 Interlocutory appeals.

(a) Rulings of Board employees, including administrative law judges, may be appealed prior to service of the initial decision only if:

Surface Transportation Board, DOT

§1118.2

(1) The ruling denies or terminates any person's participation;

(2) The ruling grants a request for the inspection of documents not ordinarily available for public inspection;

(3) The ruling overrules an objection based on privilege, the result of which ruling is to require the presentation of testimony or documents; or

(4) The ruling may result in substantial irreparable harm, substantial detriment to the public interest, or undue prejudice to a party.

(b) In stand-alone cost complaints, any interlocutory appeal of a ruling shall be filed with the Board within three (3) business days of the ruling. Replies to any interlocutory appeal shall be filed with the Board within three (3) business days after the filing of any such appeal. In all other cases, interlocutory appeals shall be filed with the Board within seven (7) calendar days of the ruling and replies to interlocutory appeals shall be filed with Board within seven (7) calendar days after the filing of any such appeal as computed under 49 CFR 1104.7.

[61 FR 52714, Oct. 8, 1996, as amended at 61 FR 58491, Nov. 15, 1996]

PART 1116—ORAL ARGUMENT BEFORE THE BOARD

Sec.

1116.1 Requests.

1116.2 Manner of presentation.

AUTHORITY: 49 U.S.C. 721.

SOURCE: 47 FR 49569, Nov. 1, 1982, unless otherwise noted.

§1116.1 Requests.

(a) *Addressee.* Requests for oral argument should be addressed to the Secretary, Surface Transportation Board, Washington, DC 20423.

(b) *Who may request?* Any party may submit a written request for oral argument and state the reasons for the request. No replies from other parties to the request shall be made.

(c) *When to file a request.* Requests for oral argument should be filed within 20 days after the date of service of the decision, order, or requirement being appealed, unless the Board by order prescribes a different time period.

(d) *Granting of request.* The Board will rule upon requests by decision, and the granting of requests is entirely at the discretion of the Board.

§1116.2 Manner of presentation.

Proponents of a rule or order will be heard first, and opponents will be heard second. One counsel only will usually be heard for each of the opposing interests, unless additional presentations are specifically authorized.

PART 1117—PETITIONS (FOR RELIEF) NOT OTHERWISE COVERED

AUTHORITY: 49 U.S.C. 721.

§1117.1 Petitions.

A party seeking relief not provided for in any other rule may file a petition for such relief. The petition should contain (a) a short, plain statement of the grounds upon which the Board's jurisdiction is based; (b) a short plain statement of the claim showing that the petitioner is entitled to relief; and (c) a demand for the relief the petitioner believes is appropriate.

[47 FR 49569, Nov. 1, 1982]

PART 1118—PROCEDURES IN IN- FORMAL PROCEEDINGS BEFORE EMPLOYEE BOARDS

Sec.

1118.1 Scope.

1118.2 Proceedings to be informal.

1118.3 Appeals.

AUTHORITY: 49 CFR 721.

SOURCE: 62 FR 50884, Sept. 29, 1997, unless otherwise noted.

§1118.1 Scope.

The rules in this part govern proceedings before employee boards.

§1118.2 Proceedings to be informal.

The proceedings in all matters governed by this part will be informal. No transcript of these proceedings will be made. Subpoenas will not be issued and, except when applications, petitions, or statements are required to be attested, oaths will not be administered.